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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/576,517

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Domokos Boda

9007-1020

3719

466 7590 10/07/2010
YOUNG & THOMPSON
209 Madison Street
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Alexandria, VA 22314

EXAMINER

TOTH, KAREN E

ART UNIT

PAPER NUMBER

3735

NOTIFICATION DATE

DELIVERY MODE

10/07/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/576,517	Applicant(s) BODA, DOMOKOS	
	Examiner KAREN E. TOTH	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 14, 15, 17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 14, 15, 17, 19, 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11, 14, 15, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Salzman (US Patent 5423320) in view of Fiddian-Greene (US Patent 6238339).

Regarding claims 11 and 19, Salzman discloses a tonometric device comprising a distal end configured to be inserted in a patient's gastrointestinal tract (element 14) with a section that is introduced into the body (element 14a), where the introduced section comprises a first tube (element 54) that is connected to an additional tube (the portion of 54 remaining outside the body) and parallel to a second tube (element 56) that is also connected to an additional tube (the portion of 56 remaining outside the body), where the distal end of the first and second tubes are in direct communication (figure 6, which shows that there is no barrier between the tubes), where the tubes are made of gas permeable material (column 5, lines 6-8 and 16-23). Salzman does not disclose the particular gas permeable material, means on the external portion of the device for fixing it in position, or the specific diameters and wall thicknesses of the first and second tubes. Fiddian-Greene teaches a tonometric device comprising a sensing section covered with a gas-permeable silicone rubber membrane (column 8, lines 50-

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51), where the device's position may be fixed using an external component of the device (element 24), in order to effectively control sampling. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the device of Salzman with a silicone rubber tube membrane and means for fixing the device's position, as taught by Fiddian-Greene, in order to effectively control sampling. Though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient, since both are used for monitoring in a gastrointestinal tract.

Regarding claim 14, Salzman in view of Fiddian-Green discloses all the elements of the claimed invention, as described above, except for connecting the tubes to a syringe. Fiddian-Greene further teaches tubes that are configured to connect to a syringe (column 24, lines 60-64), in order to manually control pressure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the system of Salzman in view of Fiddian-Green with the tubes configured to

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connect to a syringe, as taught by Fiddian-Greene, in order to manually control pressure.

Regarding claim 15, though Salzman does not expressly disclose the specific diameter and wall thicknesses of the tubes, at the time the invention was made it would have been an obvious matter of design choice for one of ordinary skill in the art to choose a particular wall thickness and diameter, because the Applicant has not disclose that the particular diameters and thicknesses provide a particular advantage, are for a particular purpose, or solve a stated problem. Moreover, it appears that a particular combination of wall thickness and diameter chosen by one of ordinary skill in the art and Applicant's wall thickness and diameter would perform equally well to monitor a patient.

Regarding claim 17, Salzman's second tube is within the wall surrounding the first tube (figure 6), since the entire shaded structure surrounding the first tube may be considered its wall, thereby making the second tube formed in that wall.

Regarding claim 20, Fiddian-Greene further teaches the gas-permeable material being configured to be permeable for carbon dioxide (column 8, lines 59-67), in order to allow monitoring of a patient's pH. It would have been obvious to one of ordinary skill in the art at the time the invention was made to d have made the device of Salzman in view of Fiddian-Green and Singh permeable for carbon dioxide, as taught by Fiddian-Greene, in order to allow monitoring of a patient's pH.

Response to Arguments

3. Applicant's arguments filed 23 February 2010 have been fully considered but they are not persuasive.

Applicant argues that Salzman's tubes are not in direct communicating connection with each other because each opens onto a chamber, where contents of one tube can mix with the contents of the chamber before passing into the second tube. The Examiner does not find this persuasive. First, the chamber provides a route of direct communication between the tubes - that is, a route with no barriers or interference. The chamber is an extension of the tubes, and is structurally equivalent to the bend indicated at Applicant's element 22 that connects Applicant's tubes. Secondly, regarding the mixing of contents, the Examiner notes that any contents in the chamber could only reach that point by coming from a tube - there are no extra substances present, so it is not clear how gasses from the tubes could contaminate other gasses from the tubes.

Applicant provides several arguments about Fiddian-Greene's sampling chamber having a different shape from the claimed invention and only one tube, but this is not found persuasive, as Fiddian-Greene is not cited for having the same structure - only for having a useful material that enables sampling. The configuration of the sampling chamber is not related to the material used to construct it. The same is true for Applicant's argument about how Fiddian-Greene's tube is not formed of the gas-sampling material. The location of the material in Fiddian-Greene has not be

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incorporated into the rejection, merely the presence of a useful material that could be incorporated into the structure of Salzman.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., avoiding widening of the lumen cross-section, an active surface/volume ratio, minimizing mixing effects, monitoring in neonates) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the dimensions of the devices, the Examiner again notes that, since Salzman is configured to be used in the same body cavities as the claimed Application, choosing similar dimensions would be obvious and a mere design choice to one of ordinary skill in the art.

Finally, if Applicant would like the listing of periodical articles to be considered, the Examiner suggests submitting the listing of the articles in an Information Disclosure Statement, as well as submitting copies of the articles to be considered.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Mon thru Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/
Primary Examiner, Art Unit 3735

/K. E. T./
Examiner, Art Unit 3735